

Application No. 08/203,004
Docket No. 061266-5001-03
Amendment dated July 9, 2008
Response to Office action mailed January 9, 2008

Remarks/Arguments:

This Amendment and Response fully replies to the final Office Action dated January 9, 2008.

Status of the claims:

Claims 47, 67, 68, 70, 72, 74, 75, and 77 are currently pending in this application and currently stand rejected. By this present amendment, claims 47, 70, and 72 are amended. Claims 67, 68, 74, 75, and 77 were previously presented. No new matter has been added.

Rejections under 35 U.S.C. 112, first paragraph:

Claims 47, 67, 68, 70, 72, 74, 75, and 77 remain rejected under 35 U.S.C. 112, first paragraph, for the reasons set forth in Section 8 of the non-final Office Action mailed May 11, 2007. Specifically, the Examiner contends that the recitation of “at least six” in independent claim 47 was not contemplated in the specification as originally filed. *See* final Office Action, Section 5. To place the claims in better form for consideration on appeal, and without any admission as to the propriety of the rejection, independent claim 47 has been amended to remove the recitation of, “at least six.” Accordingly, this rejection is now moot.

Claims 47, 67, 68, 70, 72, 74, 75, and 77 also stand rejected under 35 U.S.C. 112, first paragraph, on the new grounds that the specification does not contain a written description of the claimed invention. Specifically, the Examiner contends that the recitation of “administering a therapeutically effective amount of cyclophosphamide to the patient only prior to the first administration of said composition” in independent claim 47 has no clear support in the specification and claims as originally filed. *See* final Office Action, Section 9. To place the claims in better form for consideration on appeal, and without any admission as to the propriety of the rejection, independent claim 47 has been amended to remove this recitation. Dependent claims 70 and 72 have been amended to reflect antecedent bases from amended claim 47. Accordingly, this rejection is now moot.

Rejections under 35 U.S.C. 103(a):

Claims 47, 67, 68, 70, 72, 74, 75, and 77 remain rejected under 35 U.S.C. 103(a) on the grounds of being unpatentable over U.S. Patent No. 5,484,596 in view of Berd et al, 1989, U.S. Patent No. 5,651,993, Riott et al., U.S. Patent No. 5,008,183, and Geczy et al. for the reasons set forth in Section 17 of the non-final Office Action mailed May 11, 2007. *See* final Office Action, Section 7. Independent claim 47 has been amended to recite, “wherein said administration elicits a delayed-type hypersensitivity response by said patient to tumor cells conjugated to said hapten.” Support for this amendment can be found in the specification at least on page 13, lines 12-21; page 22, lines 26-28; and page 34, lines 5-8. Support can also be found in Figure 1. None of the references relied upon, either alone or in combination, disclose, teach, or suggest a method of treating a malignant tumor which includes co-administering to a human patient a composition comprising human tumor cells that are conjugated to a hapten, are of the same tumor type as the malignant tumor, are autologous to the patient, and have been rendered incapable of growing in the body of a human as claimed, wherein said administration elicits a delayed-type hypersensitivity response by said patient to tumor cells conjugated to said hapten. For at least the foregoing reasons, Applicant believes claim 47 is allowable as written over the cited references, and that claims 67, 68, 70, 72, 74, 75, and 77 are allowable over the cited references as depending from an allowable claim. Reconsideration and withdrawal of the rejection by the Examiner is respectfully requested.

Obviousness-type double patenting:

Claims 47, 67, 68, 70, and 74 remain rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over the claims U.S. Patent No. 6,458,369 for the reasons set forth in Section 13 of the non-final Office Action mailed May 11, 2007. Applicant submits herewith a Terminal Disclaimer directed to U.S. Patent No. 6,458,369. Accordingly, this rejection is now moot.

Conclusion:

Applicant respectfully submits that each rejection of the Examiner to the claims of the present application has been overcome, and that each of the claims is therefore in condition for allowance. Accordingly, entry of the Amendment and reconsideration by the Examiner are respectfully requested. Should the Examiner wish to discuss any aspect of this application, the Applicant's representative suggests a telephonic interview to expedite issuance of a patent.

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The Director is hereby authorized to charge any required fees, including the terminal disclaimer fee under 37 CFR 1.20(d), or credit any overpayments in connection with this submission to Deposit Account No. **50-0310** (Billing No. 061266-5001-03).

Respectfully submitted,

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July 9, 2008
Date

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